



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: May 18, 2010

TO: Mayor and Councilmembers

FROM: Engineering Division, Public Works Department

SUBJECT: Public Hearing To Acquire Property Interests At 306 West Ortega Street By Eminent Domain For The Ortega Street Bridge Replacement Project

RECOMMENDATION: That Council:

- A. Accept the Addendum to the Certified Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Lower Mission Creek Flood Control Project (State Clearing House SCH No. 1998101061, dated March 10, 2008), prepared by the City's Environmental Analyst for the Ortega Street Bridge (Bridge) Replacement Project ; and
- B. Adopt, by reading of title only, A Resolution of Necessity by the Council of the City of Santa Barbara for the Real Property at 306 West Ortega Street, Adjacent Access Easement, and Adjacent Parking Easement, all Located on Portions of Santa Barbara County Assessor's Parcel Number 037-073-011.

EXECUTIVE SUMMARY:

The Ortega Street Bridge Replacement Project (Project) will replace the existing bridge over Lower Mission Creek. The Project is an approved Federal Highway Bridge Program project with oversight provided through Caltrans. Construction of the Project is scheduled to begin in 2011.

The City must purchase various property interests for the Project, and offers have been made to affected owners. To date, with the exception of Mission Creek Properties, LLC (Mission Creek Properties), which owns the property at 306 West Ortega Street, all of the City's purchase offers have been accepted. All property interests and their status are shown on Attachment 1, and the necessary interests are outlined on Attachment 2.

The purpose of this hearing is to determine the public necessity to acquire certain remaining property interests at 306 West Ortega Street (Property Interests), to make the necessary findings to use the Eminent Domain process, and to adopt the proposed Resolution of Necessity (Resolution). Even though a tentative settlement purchase

agreement is now being drafted and may soon be signed, as a precaution to enable commencement of the Project on the optimum schedule, the proposed Resolution is recommended to be adopted by Council to authorize the City Attorney to initiate action to acquire the Property Interests by eminent domain action, if it becomes necessary.

DISCUSSION:

The Project requires the City to purchase certain rights of way, including two residential properties, and various permanent and temporary easements, as shown on Attachment 1. The City must acquire the rights of way in accordance with applicable laws and guidelines, with oversight provided by Caltrans to ensure City eligibility for reimbursement of Project costs using Highway Bridge Replacement and Rehabilitation funds provided by the Federal Highway Administration.

To date, the City purchase offers have been accepted by the owners of the following properties: 309 West Ortega Street, 314 West Ortega Street, 627 Bath Street, 631 Bath Street, and 620 Castillo Street. As previously approved by Council, steps are ongoing by staff to finalize those purchases.

Property Interests – 306 West Ortega Street

Efforts are ongoing to obtain a purchase agreement with Mission Creek Properties to enable the City to purchase certain Property Interests, including its property at 306 West Ortega Street, together with adjacent access and parking easements. The Property Interests are located on portions of the property that contain eleven residential rental units and one commercial unit, known as 306, 308, and 310 West Ortega Street, and 701, 705, and 709 Bath Street, all owned by Mission Creek Properties. The rental unit at 306 West Ortega Street is a separate structure, occupied by tenants. No other rental units at this location are needed for the Project.

Based on recent discussions between City staff and Mission Creek Properties, a purchase agreement may soon be signed, but if the steps to obtain the purchase agreement and to close the escrow are not completed on schedule, the Resolution will enable steps by the City Attorney to obtain legal possession as allowed by law to keep the Project on track. The potential for delay and increased Project costs are the primary reasons why the use of eminent domain may become necessary to acquire the Property Interests.

Tenant Relocation

The tenants at 306 West Ortega Street will be displaced by the Project because the residential unit is located within the work area. The unit will not be removed, but it will not be habitable during the Project. Steps are being taken in accordance with applicable laws and guidelines to relocate the tenants who presently occupy the rental unit to acceptable replacement housing.

Purpose of Hearing

In order to proceed with eminent domain, it is required to first conduct a public hearing concerning the Property Interests being sought by the City. Subject to the evidence presented at such hearing, Council should consider adoption of the Resolution to authorize their acquisition through the use of eminent domain if it ultimately becomes necessary.

As required by Section 1245.235 et seq. of the California Code of Civil Procedure, written notices were mailed to the owner, Mission Creek Properties, at least fifteen (15) days before the scheduled Council hearing to provide notice of Council's intent to hear any evidence and to consider the possible adoption of the Resolution. The notice satisfies all legal noticing requirements for the hearing.

As provided in the California Code of Civil Procedure, the public hearing related to the proposed adoption of the Resolution should be limited to discussion of the requisite statutory findings as set forth in Section 1240.030 of the Code of Civil Procedure, namely:

- a. That the public interest and necessity require the proposed Project.
- b. That the proposed Project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury.
- c. That the property described in the Resolution is necessary for the proposed Project.
- d. That either the offer required by Section 7267.2 of the California Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

The proposed Resolution should be adopted by Council to authorize the City Attorney to initiate Superior Court eminent domain litigation, if necessary. Pursuant to Section 1245.240 of the California Code of Civil Procedure, the proposed Resolution requires approval by at least five Council members.

Following the recommended adoption by Council of the proposed Resolution, discussions between Mission Creek Properties, the City Attorney, and City staff, with coordination by assigned agents of Hamner, Jewell and Associates, consultant on behalf of the City, will continue to possibly acquire the Property Interests by successful negotiations. The escrow necessary to finalize City acquisition of the Property will also be expedited as much as possible.

Environmental Review

Staff recommends that Council also accept the Addendum to the Certified Final EIS/EIR for the Lower Mission Creek Flood Control Project prepared by the Project Environmental Analyst. The Addendum was prepared to address the Project specific elements pertaining to the Lower Mission Creek Flood Control Project (State Clearinghouse No. 1998101061).

The Addendum concludes that the Project impacts are not substantial and do not involve new significant impacts nor a substantial increase in severity of previously identified impacts.

The Addendum is available to the public at the City Clerk's office and at the Public Counter located at the Community Development Department offices at 630 Garden Street.

BUDGET/FINANCIAL INFORMATION:

The table shown on Attachment 3 summarizes all estimated Ortega Street Bridge Replacement Project costs. The total cost is estimated at \$6,790,400, with combined costs estimated at \$2,150,000, for acquiring the necessary property interests.

In addition to payment of the costs for the purchase of properties and easements required for the Project, it is necessary to pay the costs for the relocation of displaced occupants pursuant to federal and state laws and guidelines. Once all displaced occupants have been relocated to replacement dwellings, the final costs will be known. The associated right of way and construction costs will also be shared between the City (11.47%), and grant funding (88.53%), in accordance with applicable guidelines and the formula shown on Attachment 3.

There are sufficient appropriations in the Streets Capital Fund to cover the City's costs.

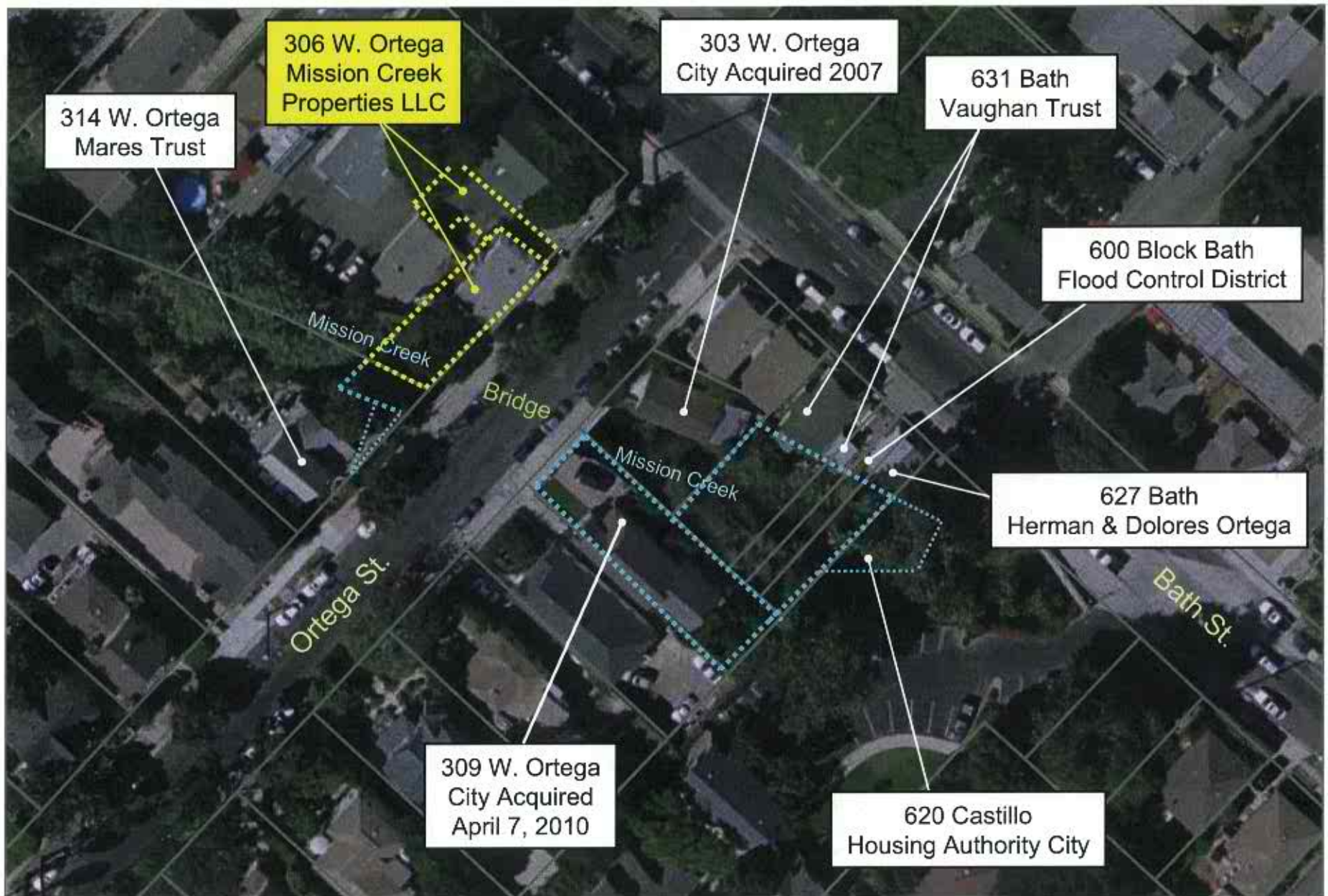
ATTACHMENTS:

- 1) Project Area Aerial Photo
- 2) Acquisitions And Easements For Ortega Street Bridge Replacement Project
- 3) Estimated Total Project Cost

PREPARED BY: John Ewasiuk, Principal Civil Engineer/DI/sk

SUBMITTED BY: Christine F. Andersen, Public Works Director

APPROVED BY: City Administrator's Office



PROJECT AREA AERIAL PHOTO

ATTACHMENT 2

Acquisitions And Easements For Ortega Street Bridge Replacement Project

The properties and easements needed for the Ortega Street Bridge Replacement Project are identified below.

Address	Description	Status
303 West Ortega Street, City Property	Entire Property Acquired; Structure Located Within Mission Creek Work Area	City Acquired 2007
306 West Ortega Street, Mission Creek Properties LLC	Portion Property to be Acquired in Fee, along with Easement for Access, and Along with Easement for Parking; Structure Located Within Mission Creek Work Area	Offer Pending Ongoing Contacts by City Agents with Owner, Mission Creek Properties, LLC; Hearing Relating to Possible Use of Eminent Domain
309 West Ortega Street, Manuel & Juana Figueroa	Entire Property Acquired; Structure Within Mission Creek Work Area	City Acquired and Closed Escrow on April 7, 2010; Approved by Agreement 23,296
314 West Ortega Street, Mares Family Trust	Temporary Construction Easement and Mission Creek Easement Acquired; Released Narrow Strip of Land within Mission Creek	City Acquired Easements on April 27, 2010, by Agreement 23,410; Escrow Pending
620 Castillo Street, Housing Authority of City	Temporary Construction Easement Acquired for Work in Mission Creek	City Acquired Easement on April 27, 2010, by Agreement 23,413
627 Bath Street, Herman & Dolores Ortega	Mission Creek Easement Acquired for Alignment of Mission Creek	City Acquired Easement on April 27, 2010, by Agreement 23,411; Escrow Pending
600 Block Bath Street, County Flood Control District	Encroachment Permit for Work in Mission Creek	Issuance of Permit by County Flood Control District Pending
631 Bath Street, Vaughan Trust	Mission Creek Easement Acquired for Alignment of Mission Creek	City Acquired Easement on April 27, 2010, by Agreement 23,412; Escrow Pending

ATTACHMENT 3**ORTEGA BRIDGE REPLACEMENT PROJECT****ESTIMATED TOTAL PROJECT COST**

PROJECT PHASE	HBP SHARE	CITY SHARE	ESTIMATED COSTS
Design Phase *	\$707,760	\$176,940	\$884,700
Right of Way Phase	\$1,903,395	\$246,605	\$2,150,000
Construction Phase	\$3,324,920	\$430,780	\$3,755,700
Totals	\$5,936,075	\$854,325	\$6,790,400

The table above shows total estimated Project costs. The Project is currently in the Right of Way Phase and has been authorized up to \$2,150,000 (per written approval by Caltrans).

Caltrans is overseeing the City's steps to purchase all properties and easements for the Project, since 88.53% of the City's eligible right of way and construction costs will be reimbursed by the Federal Highway Bridge Program (HBP) through Caltrans. The City will be responsible for 11.47% of these eligible costs.

- * The Design Phase of this Project included 80% Federal Highway Bridge Program reimbursement with the City responsible for 20% of eligible Design costs.